



W.P.No.13151 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                      |            |
|----------------------|------------|
| <b>Reserved on</b>   | 28.03.2024 |
| <b>Pronounced on</b> | 25.04.2024 |

CORAM :  
**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**Writ Petition No.13151 of 2012**  
**and M.P.No.1 of 2012**

M.S.Nalantha

... Petitioner

Vs.

1.The District Educational Officer (Chennai East),  
Jai Gopal Karodia Girls High School,  
Choolaimedu,  
Chennai – 600 094.

2.The Secretary,  
School committee,  
The Hindu Higher Secondary School,  
149, Big Street,  
Triplicane,  
Chennai – 600 005.

... Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records relating to the order No.494/11-12 dated 27.04.2012 passed by the second respondent and quash the same and consequently direct the second respondent to pay the salary to the post of the Library Attender to the petitioner as per the order of appointment No.344/2010-11 dated 18.02.2011 issued by the second



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respondent.

For Petitioner : Mr.M.Gnanasekar

For Respondent 1 : Mr.R.Neelakandan,  
Additional Advocate General  
Assisted by  
Mr.T.M.Rajangam,  
Government Advocate

For Respondent 2 : Mr.R.Lakshmi Narasimhan

### **ORDER**

The relief sought by the petitioner in this writ petition is to call for the concerned records relating to the order No.494/11-12 dated 27.04.2012 passed by the second respondent and quash the same and consequently direct the second respondent to pay the salary to the post of the Library Attender to the petitioner as per the order of appointment No.344/2010-11 dated 18.02.2011 issued by the second respondent.

2. The case of the petitioner is that the petitioner has studied B.Lit., from the Madras University and thereafter passed M.A. Tamil in 2005 and M.Phil., in 2007. The post of Tamil Pandit in the second respondent school fell vacant in 2010 consequent to the retirement of the incumbent. The petitioner was making repeated request to the school management to appoint



her to the post of Tamil pandit since she was already working in the same school and qualified for the same. She joined the school as a sweeper on 27.01.1997 and her appointment was through Employment Exchange. Even though she was eligible and qualified to be appointed as a Tamil pandit, the school management had delayed the appointment and subsequently appointed one Smt.V.Kanagalakshmi, in the year 2011.

3. Mr.Jaganath, the husband of aforesaid Smt.V.Kanagalakshmi was also working in the same school as a Tamil Pandit and the appointment of the petitioner as a Tamil Pandit was delayed only in order to accommodate the said Smt.V.Kanagalakshmi. This being so, the second respondent by an order dated 18.02.2011 has promoted the petitioner to the post of Library Attender with effect from 12.02.2011 in the place of one Smt.T.Rajammal, who retired on 30.06.2008 and placed on probation for a period of 2 years and granted a scale pay of Rs.4800-10,000/- PB1A-GP 1400/- with effect from 12.02.2011.

4. Even though the petitioner has assumed the promotion post and discharged her duties as a Library Attender, she has not been paid her salary so far for the period during which she has worked as Library Attender and she



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has been paid her salary only as a Sweeper. After 14 months of her promotion as Library Attender, the second respondent by an order No.494/11-12 dated 27.04.2012 informed the petitioner that the proposal for approval to her promotion as Library Attender was rejected by the first respondent under the ground that there was ban on recruitment as per G.O.Ms.No.203, School Education Department, dated 23.07.2010. Aggrieved over the same, the petitioner has come forward with the present writ petition.

5. Learned counsel for the petitioner submitted that the G.O.Ms.No.203, School Education Department, dated 23.07.2010 was issued by the Government totally in a different context. The said Government Order classified two categories of posts in annexure I & II. In respect of annexure-I, the posts mentioned is Watchmen, Gardener cum Sweeper, Watermen, Sweeper, Watermen cum Sweeper, Scavenger cum Gardener, Sweeper cum Scavenger, Watermen cum Gardener and Watchment cum Sweeper. It is further submitted that in respect of the above posts permission was granted to engage persons by out sourcing. In respect of the 484 posts mentioned in annexure-II, the Government permitted the post to be filled on regular scale of pay and the post of Library Attender is mentioned as number 4 in annexure-II



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and the order of appointment dated 18.02.2011 issued by the school committee/second respondent is perfectly valid. Therefore, the order No.494/11-12, dated 27.04.2012 passed by the second respondent is liable to be set aside by this Court.

6. Learned counsel for the petitioner would submit that taking into account that the petitioner has been working in the same school from the year 1997 and also acquired higher qualifications while in service, the second respondent has issued an order dated 18.02.2011 by promoting the petitioner to the post of Library Attender. In any event there was no infirmity in the order of promotion dated 18.02.2011 and the same was issued by the second respondent who is competent to make promotion to the post of Library Attender.

7. Learned counsel for the petitioner would further submit that the ban on recruitment imposed by the Government in G.O.Ms.No.203, School Education Department, dated 23.07.2010 applies only to the recruitment and not to the promotions. It is further submit that in respect of the posts included in annexure-II to the G.O.Ms.No.203, School Education Department, dated



23.07.2010, it was clearly mentioned that the ban will not apply and the school managements were permitted to fill up the post filling under annexure-II to the G.O.Ms.No.203 dated 23.07.2010. Therefore the reason given by the second respondent for reverting the petitioner to the post of Sweeper is illegal and untenable and liable to be set aside.

8. Learned counsel for the petitioner would further submit that the ban on recruitment is not applicable to the post of Library Attender since, it was filled by promotion and she was rightly promoted to the post of Library Attender with effect from 12.02.2011 by the second respondent. Therefore, it is not open to the second respondent to revert her to the post of Sweeper by cancelling the order dated 18.02.2011. Therefore the order of reversion dated 27.04.2012 is illegal arbitrary and contrary to the principles of natural justice.

9. The counter affidavit was filed by the first respondent on 03.10.2023. Learned Additional Advocate General appearing for the first respondent would submit that the post of Library Attender fell vacant in that school on 30.06.2008 subsequent to the retirement of Tmt.T.Rajammal. After a lapse of nearly 26 months, the second respondent herein has appointed the petitioner



as Library Assistant with effect from 12.02.2011 which was fell vacant on 30.06.2008 vide order dated 18.02.2011.

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10. Learned Additional Advocate General appearing for the first respondent would further submit that the petitioner has submitted her joining report to the Secretary of the school by letter dated 24.06.2011 mentioning that she has assumed duty on 12.02.2011. Further the second respondent has submitted a proposal to the District Educational Officer, Chennai East on 14.02.2012 for approval of the post of Library Assistant which was filled by appointing the petitioner herein that too after a lapse of almost one year. The then District Educational Officer, Chennai East by letter O.Mu.No.1090/Aa4/2012, dated 05.04.2012 has returned the proposal stating the following reasons:

(i) Tmt.M.S.Nalantha was promoted to the post of Library Assistant with effect from 12.02.2011 but she has joined duty after four months.

(ii) But the Correspondent of the school has stated that she is working in the said post from 12.02.2011 for the reason known only to him.

(iii) Further, the proposal for the approval of promotion has been received after a lapse of one year.



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(iv) In respect of non-teaching staff posts, when vacancies arises, the District Educational Officer can approve those posts only with the concurrence of the Director of School Education.

11. Learned Additional Advocate General appearing for the first respondent would submit that the then District Educational Officer, Chennai East has not refused to approve the promotion of the petitioner on the ground that there was ban on recruitment as per G.O.Ms.No.203, School Education Department, dated 23.07.2010 and the petitioner was promoted to the post of Library Assistant only with the condition that it is subject to the approval of the District Educational Officer and pay for this post will be paid on approval only.

12. Learned Additional Advocate General appearing for the first respondent would further submit that the following **queries are unanswered either by the petitioner or by the second respondent herein:**

**(i) Filling up of post of Library Attender after a lapse of 2 years time period by the management.**

**(ii) Petitioner herein has submitted her joining report to the Secretary of the school by letter dated 24.06.2011 mentioning that she has**



**assumed duty as Library Assistant on 12.02.2011.**

**(iii) Proposal submitted for approval of the promotion of the petitioner to the District Educational Officer, Chennai East after a lapse of one year by the school secretary.**

**13. Learned Additional Advocate General appearing for the first respondent would further submit that since the second respondent herein had not felt the need of the Library Assistant post for a long span of two years and he has not explained what necessitated the school to fill the post after two years. It is further submitted that as of now, there is no post of Library Assistant in the second respondent's school. Hence, the petitioner cannot be accommodated in that post by way of providing promotion.**

**14. The counter affidavit has also filed by the second respondent/Management dated 09.11.2022.**

**15. The learned counsel appearing for the second respondent would submit that after the rejection of promotion of the petitioner by the first respondent, the second respondent had issued a letter directing the petitioner**



to continue her service as Sweeper in the school and the petitioner had refused to accept the said letter and had obtained a stay order against this letter issued by the School Secretary. Moreover, the Library Attender post was abolished by the first respondent and therefore the petitioner cannot be appointed as Library Attender as claimed in the writ petition. The school authorities are always ready and willing to obey the order passed by the first respondent. Further, the first respondent has ample powers to decide about approval of the petitioner's promotion as Library Attender.

16. Heard the learned counsel on either side and perused the materials available on record.

17. The petitioner was initially appointed as Sweeper on 27.01.1997 in the second respondent school. Since she had the qualification of B.Lit., M.A. Tamil and M.Phil., she applied for the post of Tamil Pandit in the said school which felt vacant in the year 2010 subsequent to the retirement of the incumbent. The petitioner made request to the school management to appoint her to the post of Tamil Pandit since she is already working in the same school and qualified for the said post of Tamil Pandit. The appointment was



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delayed and the second respondent school has appointed one Mrs.V.Kanagalakshmi as Tamil Pandit in the year 2011 despite the representations given by the petitioner to the second respondent school on 18.02.2008, 24.02.2010, 29.06.2010 to consider her for appointment as Tamil Pandit.

18. Thereafter, the petitioner prayed for promotion to the post of Library Attender in the same school and the second respondent by order dated 18.02.2011 has appointed the petitioner to the post of Library Attender with effect from 12.02.2011 since one Mrs.T.Rajammal, who was holding the post was retired on 30.06.2008 and the petitioner was placed on probation for a period of two years and granted scale of pay of Rs.4800-10,000 PB1A-GP 1400/- with effect from 12.02.2011.

19. Though the petitioner has assumed the promotional post and discharged the duties as Library Attender she was not paid salary to the promotional post and she has given a salary of the sweeper. This being the case after 14 months of her promotion as Library Attender in the second respondent school, an order of rejection was issued on 27.04.2014 by the first



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respondent, rejecting the proposal for approval for promotion of the petitioner as Library Attender on the ground that there is a ban of recruitment as per G.O.Ms.No.203, School Education Department, dated 23.07.2010.

20. The above Government Order only imposing ban on recruitment, but here in the instant case it is not an appointment of the petitioner and only the promotion of the petitioner from the post of Sweeper to the post of Library Attender. Hence, the above Government Order is not applicable to the case of the petitioner. The petitioner was appointed to the post of Library Attender only with effect from 12.02.2011 after a lapse of nearly 26 months from the date when it fell vacant i.e., on 30.06.2008. The second respondent school submitted the proposal to the first respondent on 14.02.2012 for approval for the post of Library Attender which was filled by appointing the petitioner that too after a lapse of one year.

21. One of the grounds for rejecting the proposal of the second respondent school in regard to the promotion of the petitioner to the post of Library Attender is that the school has not felt the need of the Library Attender for nearly two years and the second respondent has not explained



what necessitated the school to fill up the post after two years and as of now, there is no post of Library Attender in the second respondent school and the petitioner cannot be accommodated by providing promotion.

**22. The petitioner has filed this writ petition challenging the order No.494/11-12 dated 27.04.2012 passed by the second respondent dated and this Court at the time of admission has passed the following order in M.P.No.1 of 2012 dated 04.05.2012 and the same reads as follows:**

*“Notice of motion returnable in eight weeks. Interim stay till then.”* so according to this order, the interim stay got expired on 04.07.2012 and subsequently it was not extended. Further, the pay band is one and the same for both post but the Grade Pay is different i.e., Rs.1300/- for the post of Sweeper and Rs.1650/- for the post of Library Attender.

**23. Learned counsel for the petitioner contended that the petitioner is still working as a Library Attender and not as a Sweeper as on 04.03.2024. Whereas, the learned counsel appearing for the second respondent submitted that the petitioner is working only as a Sweeper. Therefore, this Court directed the first respondent/The District**



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**Educational Officer, Chennai-15 to inspect the school and find out the nature of the job of the petitioner i.e., whether she is holding the post of Sweeper or Library Attender and to file a report in this regard in a sealed cover before this Court on 12.03.2024.**

**24. Pursuant to the said order, the first respondent has submitted a report on 12.03.2024 that the petitioner is only working as a Sweeper as per the Attendance Register maintained by the second respondent school and not as Library Attender as claimed/contended by the petitioner and the copy of the Attendance Register was also enclosed along with the report and the said Attendance Register was also counter signed by the Head Master of the second respondent school, which was inspected by the first respondent on 04.03.2024 as directed by this Court. Further, the statement by the petitioner in paragraph 5 of the additional typed set of papers dated 22.03.2024 that in view of the interim stay granted by this Court on 27.04.2012, the petitioner is continuously working as a Library Attender cannot be countenanced by this Court for a simple reason that the interim stay granted by this Court on 04.05.2012 is only for a period of eight weeks which got expired on 04.07.2012 and subsequently was not**



**extended by this Court.**

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**25. The above fact that the interim stay is granted only for a period of eight weeks is also evident in the order copy produced by the petitioner as well as on perusal of the records by this Court. Moreover, the proposal sent by the second respondent school for approving the promotion of the petitioner to the post of Library Attender cannot be approved by the first respondent in view of G.O.Ms.No.203, School Education Department, dated 23.07.2010. It is pertinent to note that as per G.O.Ms.No.203, School Education Department, dated 27.03.2010, six vacancies were notified in Annexure-II for the post of Library Attender and the same can be regularized in time scale of pay from the date of filling up of the said vacancy. In the instant case, though the post fell vacant as early as on 30.06.2008 i.e., prior to the issuance of the above said Government Order, the petitioner was promoted to the post of Library Attender by the second respondent only on 18.02.2011. If the post of Library Attender is filled up prior to the issuance of Government Order, it has to be a full time scale of pay after getting approval of the Government. Hence, the first respondent is right in rejecting the**



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**proposal sent by the second respondent school management for approving the promotion of the petitioner to the post of Library Attender.**

**26. It is also rightly contended by the first respondent though the post was felt vacant on 30.06.2008, the petitioner was promoted to the post of Library Attender only on 18.02.2011 by the School management which is after a delay of more than 2 years and if the school is able to run without the Library Attender for the above said period, there is no necessity to promote the petitioner to the post of Library Attender that too subsequent to the issuance of G.O.Ms.No.203, School Education Department, dated 23.07.2010. It is because of the above said delay caused by the second respondent school in promoting the petitioner to the post of Library Attender, the proposal was rejected by the first respondent in the light of G.O.Ms.No.203, School Education Department, dated 27.03.2010.**

**27. In view of the above factual matrix of the case, this Court is of the considered view that the order No.494/11-12 dated 27.04.2012 passed**



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**by the second respondent does not warrant any interference by this Court and the same is hereby confirmed.**

**28. In the result, this writ petition stands dismissed. No costs.**

**Consequently, connected miscellaneous petition is also closed.**

**25.04.2024**

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Index : Yes/No  
Speaking Order : Yes/No  
Neutral Citation : Yes/No

To:

1.The District Educational Officer (Chennai East),  
Jai Gopal Karodia Girls High School,  
Choolaimedu,  
Chennai – 600 094.

2.The Secretary,  
School committee,  
The Hindu Higher Secondary School,  
149, Big Street,  
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**25.04.2024**